STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TEMPLE CITY EDUCATION ASSOCIATION, CTA/NEA,	)	
Charging Party,	)	Case No. LA-CE-2876
v.	)	PERB Decision No. 843
TEMPLE CITY UNIFIED SCHOOL DISTRICT,	)	September 28, 1990
Respondent.	)	

Appearances: Charles R. Gustafson, Attorney, for Temple City Education Association, CTA/NEA; Wagner, Sisneros & Wagner by John J. Wagner, Attorney, for Temple City Unified School District.

Before Craib, Camilli and Cunningham, Members.

DECISION

CUNNINGHAM, Member: This case, before the Public Employment Relations Board (PERB or Board), is an appeal of a Board agent's partial dismissal and refusal to issue complaint. The charge filed by the Temple City Education Association, CTA/NEA (Association) alleges, in part, that the Temple City School District (District) violated section 3543.5(b), (c) and (e) of the Educational Employment Relations Act (EERA or Act)[1] by

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 states, in relevant part:

> It shall be unlawful for a public school employer to do any of the following:
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and negotiate in

unilaterally changing policies on salary increase, semester units for advancement on salary schedule, fringe benefits and personal necessity leave. The Board agent concluded that these allegations did not state a prima facie violation of EERA, because he found that, inter alia, the allegations were conclusory, the parties were at impasse and the policy changes were identical to the District's last, best offer. The Association, in its appeal, contends that the regional attorney exceeded his authority by making determinations regarding disputed factual matters, and that he improperly analyzed the legal issues presented by this case.

We have examined the entire record in this matter, and for the reasons stated below, we reverse the Board agent's partial dismissal and order that a complaint issue.

FACTUAL SUMMARY

The parties' collective bargaining agreement, effective November 1, 1986 through June 30, 1989, contained a reopener provision which allowed either party to make proposals regarding salary, fringe benefits and any two other contract items at or after March 1988. Accordingly, in April 1988, the Association presented reopeners on salary (Art. XIV), fringe benefits (Art. XV), transfers (Art. VI) and leaves (Art. VIII). The District presented its proposals on these four items in May, and the

---

good faith with an exclusive representative.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

parties began negotiations on the reopeners on June 27. Impasse was declared on August 31, and a mediator was appointed. The matter was certified for factfinding by the mediator on November 22, and the factfinding report issued on February 21, 1989.

On March 22, 1989, the parties met to discuss the report. The Association alleges that, at this session, the District presented a "take-it-or-leave-it" bargaining position. It is alleged that no negotiations took place on this date because the District was unwilling to negotiate. The District's position was significantly different from its previous offers calling for the retention of existing contract language. The parties met again on April 20, at which time the District presented "the Board's last, best, and final offer." The District allegedly did not consider or discuss proposals made by the Association at this session.

On April 25, the District unilaterally adopted the terms and conditions of employment contained in "the Board's last, best, and final offer."

DISCUSSION

On appeal of the partial dismissal, the Association asserts two arguments.* First, it argues that the regional attorney exceeded his authority by deciding a factual dispute. Second, the Association contends that the regional attorney disregarded well-established precedent and misinterpreted the Board's

decision in Modesto City Schools (1983) PERB Decision No. 291 (Modesto). Each of these arguments is addressed below.

The Association relies on Eastside Union School District (1984) PERB Decision No. 466 (Eastside) for the proposition that Board agents are not empowered "to rule on the ultimate merits of a charge" in accordance with Regulations 32620 and 32640.[2] Where the investigation reveals that there are disputed material facts or contrary theories of law, principles of due process require issuance of a complaint and a formal hearing. (Id. at p. 7.) In determining whether a prima facie case has been stated by the charging party, the Board agent is to take the factual allegations as true. (See Riverside Unified School District (1986) PERB Decision No. 562a; San Juan Unified School District (1977) EERB Decision No. 12.[3])

In this instance, the Association points to specific factual allegations which support its theory in this case or, at the very

---

[2]Regulation 32620(b)(4) provides, in relevant part:

> (b) The powers and duties of such Board agent shall be to:
>
> (4) Make inquiries and review the charge and any accompanying materials to determine whether an unfair practice has been, or is being, committed . . . .

Regulation 32640(a) states, in pertinent part:

> The Board agent shall issue a complaint if the charge or the evidence is sufficient to establish a prima facie case.

[3]Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

least, provide the basis for a finding that a prima facie case has been stated. Specifically, it points to allegations in the charge that, although the parties met on March 22 and April 20, 1989, and the District presented a written bargaining position, "no negotiations took place" at these post-factfinding sessions. Moreover, "offers made by the District after factfinding were presented as ultimatums, were offered on a 'take-it-or-leave-it' basis with a refusal and failure on the part of the District to consider or discuss proposals made by the Association." Likewise, the Association asserts that the cover memo to the District's "last, best, and final offer" of April 20, demonstrates the District's "take-it-or-leave-it" stance by stating up front that it is the District's position that the negotiating process has been exhausted. Thus, the District's last, best offer was, in fact, merely an offer of the option to consent to a unilateral fait accompli, argues the Association.

Despite the allegations discussed in the previous paragraph, the Association claims that the regional attorney made the following contrary factual findings: (1) the parties entered into negotiations after factfinding; (2) the District's post-factfinding "offers" were introduced into the bargaining arena; (3) there were bilateral discussions with regard to the "offers"; and (4) the Association was given the opportunity to consider and act upon these "offers." By deciding these contested factual issues during the course of his investigation of this charge, the Association claims that the regional attorney exceeded his

authority, and his partial dismissal should therefore be reversed by the Board.

In its response to the appeal, the District appears to implicitly admit that the regional attorney indeed resolved disputed facts. The sole argument made by the District is that the Board's Eastside decision should be overturned, because it establishes a policy which prolongs controversy and is therefore detrimental to employer-employee relations. The District also claims that the prohibition against determination of disputed factual matters by regional attorneys results in wasted resources as well as time. Nowhere in its response to the Association's appeal does the District address or refute the Association's claim that the regional attorney made certain factual determinations in arriving at the ultimate disposition of this case.

The Board in Modesto stated that, subsequent to factfinding, the parties are required to examine the factfinding report to see if they can find a basis for settlement or for compromises that might lead to settlement. (Id. at p. 37.) This obligation includes the requirement that the parties seriously discuss the report and engage in a further exchange of information which may determine whether movement toward settlement is a possibility. (Id. at p. 37, fn. 18.) The Board in Modesto concluded that the employer's post-factfinding conduct, which included a statement to the union that there would be no negotiations and that the union could accept the employer's position or have it imposed

as a post-impasse unilateral change, constituted a refusal to bargain in good faith in violation of section 3543.5(c).

Accepting the Association's allegations as true, in this case, we find that a prima facie case of failure to bargain within the scope of Modesto has been stated.[4] The Association claims that the District did not, in good faith, seriously discuss the factfinding report at the March and April sessions, nor did it consider all possible bases for settlement or compromise. To the contrary, the District's post-factfinding conduct allegedly consisted solely of presenting a "take-it-or-leave-it" proposal, followed by a slightly changed position in April labeled as its "last, best, and final offer," with a memo stating that it believed the negotiating process to be completed. The Eastside prohibition against resolution of disputed material facts prior to formal hearing exists to ensure that charging parties are accorded due process. Accordingly, due process, in this instance, requires that the Association be given the opportunity to prove, at a formal hearing, the truth of the allegations contained in its charge.

The Association also takes issue with the regional attorney's application of the rule that an employer may unilaterally adopt only those changes reasonably comprehended within preimpasse proposals. (Taft Broadcasting Company

---

[4]We note that bad faith "bargaining" conduct, which occurs during the pendency of statutory impasse procedures, constitutes a violation of section 3543.5(e), rather than 3543.5(c). (Moreno Valley School District v. Public Employment Relations Board (1983) 142 Cal.App.3d 191.)

(1967) 163 NLRB 475, enforced sub nom.; American Federation of Television and Radio Artists v. National Labor Relations Board (D.C. Cir. 1968) 395 F.2d 622; Modesto City Schools District (1983) PERB Decision No. 291, pp. 46-47.) We decline to address this issue at this time as it is unnecessary.[5]

ORDER

For the reasons set forth above, the Public Employment Relations Board finds the Temple City Education Association's Appeal of Partial Dismissal and Refusal to Issue Complaint to have merit, and REMANDS this matter to the Office of the General Counsel for issuance of a complaint.

Members Craib and Camilli joined in this Decision.

[5]Though not raised in the Association's appeal, the Board agent rejected the Association's assertion that the District had no right to implement changes in reopened subjects, even if impasse procedures had been exhausted. This issue also need not be addressed at this time.